

DECISION

19747
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-198983.2**DATE:** October 9, 1981**MATTER OF:** Panama Canal Commission Pilots - Retroactive Promotions

DIGEST: There is no basis to overrule decision of November 19, 1980, wherein it was held that Panama Canal Commission Pilots whose promotions were delayed due to absence of clerk responsible for forwarding promotion papers were not entitled to retroactive promotions. The general rule prohibiting retroactive personnel actions is not restricted to only those employees who are subject to the appointment, classification and pay provisions of title 5, United States Code. Furthermore, there is nothing in either the language or legislative history of the Panama Canal Act of 1979 which would authorize the requested retroactive personnel actions.

By letter dated May 26, 1981, D. P. McAuliffe, Administrator, Panama Canal Commission, has requested that we reconsider our decision B-198983.2, November 19, 1980, wherein we held that six Panama Canal pilots were not entitled to a retroactive promotion with backpay. Their promotions had been delayed by the absence of the clerical employee responsible for preparing and forwarding the necessary papers to the official authorized to approve promotions. We have been asked to reconsider our decision of November 19, 1980, on the basis that the positions at the Commission are outside the competitive civil service and are not subject to the appointment, classification, and pay provisions of title 5, United States Code. Upon further consideration, we find no basis which would warrant changing our earlier determination in this matter.

Our decision denying retroactive promotion was based on the general rule that promotions may not be effected retroactively, and, more specifically on the fact that the delay in initiating the particular promotions in question did not fall within the limited exception to that general rule for clerical or administrative delay or omission in the processing

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B-198983.2

of personnel actions. For such delay or omission to provide a basis for retroactive promotion, the delay or omission must have occurred after approval of the promotion by the official having delegated authority.

The Administrator suggests that the rationale for our holding in 60 Comp. Gen. 83 (1980) may provide a basis to reconsider our holding of November 19, 1980. In the published decision we held that the Senior Executive Service provisions of Title IV of the Civil Service Reform Act, Public Law 95-454, October 13, 1978, 92 Stat. 1111, 1154, do not apply to positions in the Panama Canal Commission which have been specifically excepted from the competitive civil service and placed outside of the appointment, classification, and pay provisions of title 5, United States Code, by section 1202(a) of the Panama Canal Act of 1979, Public Law 96-70, September 27, 1979, 93 Stat. 452, 461. In view of the status of the positions in the Commission we are asked whether the employees occupying such positions would thereby be placed outside the general rule regarding retroactive personnel actions upon which our decision was based.

We see no reason why the employees of the Commission should not be subject to the general rule regarding retroactive personnel actions. The general prohibition against retroactive personnel actions, while applicable to employees subject to the appointment, classification, and pay provisions of title 5, United States Code, is not restricted to such employees since the prohibition does not arise out of the language of the provisions of law contained in title 5, United States Code.

It has long been established that personnel actions may not be made retroactively effective in the absence of a statute so providing. Prior to the passage of the first Civil Service Act, the Pendleton Act of 1883, 22 Stat. 403, the Supreme Court in United States v. McLean, 95 U.S. 750 (1877), held that where a salary readjustment for a deputy postmaster was by statute predicated upon administrative action, the salary increase would not

B-198983.2

take effect until the Postmaster General had acted to adjust the salary and that the Government was not obligated to pay an increased salary prior to the date of such action.

As suggested by the above holding the rule against retroactive personnel actions is a principle of administrative law applicable to individuals outside of the competitive civil service and outside the Classification Act. In 17 Comp. Dec. 452 (1910) the Assistant Comptroller of the Treasury held that enlisted men of the Navy Hospital Corps holding acting appointments could not receive permanent appointments and the higher salary attached to such appointments retroactive to the date they became eligible for permanent appointment. It was held therein that such a retroactive personnel action could not be granted unless expressly authorized by law. For essentially the same reason we held in 31 Comp. Gen. 191 (1951), that employees of the Central Intelligence Agency who were excepted by law from the classification provisions of title 5 of the United States Code could not be given retroactive salary increases. See also 39 Comp. Gen. 583 (1960).

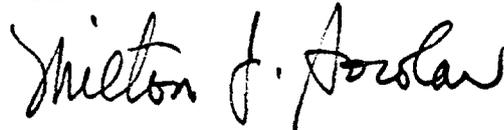
There is nothing in either the express language or the legislative history of the Panama Canal Act which would grant the Commission general authority to make retroactive personnel actions. Furthermore, there is no provision in such act which would require that the pilots in question be promoted at a specific time.

We note that although these pilots may have qualified for and performed higher level duties prior to the effective date of their promotions, as stated in our earlier decision in this matter, it is well settled that an employee is entitled to only the salary of the position to which he has been appointed regardless of the duties he may perform. Coleman v. United States, 100 Ct. Cl. 41 (1943). This rule was based upon the holding in United States v. McLean, *supra*. See Coleman at 42. See Arthur Price v. United States, 112 Ct. Cl. 198 (1948).

B-198983.2

Since the general rule against retroactive promotions is for application and as no facts have been presented which show that the delay in the pilots' promotions falls within the exceptions to such rule, there is no basis upon which they may be allowed the requested retroactive promotions with backpay.

In accordance with the above, our decision of November 19, 1980, is sustained.



Acting

Comptroller General
of the United States